

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

MEYNARD DESIGNS, INC. AND EARTH,  
INC.

Plaintiffs and  
Counterclaim-Defendants,

v.

EARTH PRODUCTS INC.

Defendant and  
Counterclaim-Plaintiff.

EARTH PRODUCTS INC.

Third-Party Plaintiff and  
Counterclaim-Defendant,

v.

PLANET, INC.

Third-Party Defendant and  
Counterclaim-Plaintiff.

CIVIL ACTION NO. 05 cv 11781 NMG

**CONCISE STATEMENT OF UNDISPUTED MATERIAL  
FACTS IN SUPPORT OF EARTH PRODUCTS INC.'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT OF INVALIDITY  
OF UNITED STATES TRADEMARK REGISTRATIONS 2,249,826 AND 2,199,118**

1. On July 20, 1994, Mondial Trading Company, Ltd. ("Mondial Trading") filed an intent to use application pursuant to the Lanham Act § 1(b) for use of the mark EARTH on clothing, U.S. Trademark Application Serial No. 74/551611 (the "'611 Application"). (*See* Derrick W. Toddy Declaration In Support Of Earth Products Inc.'s Motion For Partial Summary

Judgment of Invalidity of United States Trademark Registrations 2,249,826 and 2,199,118 (“Toddy Decl.”), Exh. A, July 20, 1994 Trademark Application – Intent To Use.)

2. Mondial Trading executed an assignment of the ‘611 Application to Michel Meynard, Inc., which purported to be effective as of June 25, 1997, (Toddy Decl., Exh. B, September 26, 1997 Trademark Response and Assignment.)

3. There is no evidence that Michel Meynard, Inc. was a successor to the business of the applicant, Mondial Trading, or any portion thereof, to which the EARTH mark pertained.

4. There is no evidence that Mondial Trading transferred any other assets to Michel Meynard, Inc. along with Mondial Trading’s assignment of the ‘611 Application.

5. Michel Meynard, Inc. assigned the ‘611 Application back to Mondial Trading “in late 1997 or early 1998,” (Toddy Decl., Exh. C, Meynard’s Resp. to Earth Products Inc.’s 3<sup>rd</sup> Set of Interrogs., Resp. to Interrog. No. 27, pg. 10), before Mondial Trading filed the first verified statement of use for that intent to use application on January 23, 1998 (Toddy Decl., Exh. G, January 23, 1998 ITU Request for Extension of Time, Statement of Use and Request to Divide).

6. There is no evidence that Mondial Trading was a successor to the business of Michel Meynard, Inc., or any portion thereof, to which the EARTH mark pertained.

7. There is no evidence that Michel Meynard, Inc. transferred any other assets to Mondial Trading along with Michel Meynard, Inc.’s assignment of the ‘611 Application.

8. There is no evidence that Mondial Trading was a successor to any part of Michel Meynard, Inc.’s business.

9. After Michel Meynard, Inc. assigned the ‘611 Application to Mondial Trading, Michel Meynard, Inc. continued any business to which the EARTH mark pertained, to the extent that any such business was ongoing and existing. (Toddy Decl., Exh. D, Meynard’s Resp. to

Earth Products Inc.'s 1<sup>st</sup> Set of Interrogs., Resp. to Interrog. No. 7, pg. 16; *id.*, Exh. C, Resp. to Interrog. No. 26, pgs 7-9, Resp. to Interrog. No. 30, pgs 12-13; *id.*, Exh. E, Celso Kiefer Dep. Tr., 79:15 – 80:11, 81:7-11, 82:15-21, and 105:5-8; *id.*, Exh. F, John Chopak Dep. Tr., 210:14-25.)

Dated: October 25, 2007

By: /s/ Derrick W. Toddy

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**CERTIFICATE OF SERVICE**

I certify that this CONCISE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF EARTH PRODUCTS INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT OF INVALIDITY OF UNITED STATES TRADEMARK REGISTRATIONS 2,249,826 AND 2,199,118 was served by electronic mail on counsel for the other parties to this action.

Dated: October 25, 2007

By: /s/ Derrick W. Toddy

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